No. 85-1358

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

WILLIAM L. LUKHARD, COMMISSIONER,
VIRGINIA DEPARTMENT OF SOCIAL SERVICES
Petitioner,

v.

ONA MAE REED, SALLIE LONG, RUTH WILCHER,
OPAL MAE COOK, STELLA KING, AND ALL
OTHERS SIMILARLY SITUATED,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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CERTIORARI GRANTED JUNE 23, 1986

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The following have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

Civil Action No. 83-0493

REED, *et al.*,	)	
	)	
Plaintiffs	)	
	)	
v.	)	COMPLAINT
	)	
LUKHARD, *et al.*,	)	
	)	
Defendants.	)	

I. PRELIMINARY STATEMENT

Plaintiffs bring this action as a challenge to certain state and federal regulatory provisions relating to the defendants' administration of the Aid to Dependent Children Program (hereinafter "ADC"). The challenged regulations provide that when an ADC recipient receives non-recurring "lump-sum" income, a period of automatic ineligibility is imposed during which ADC benefits are denied to the entire family. The set period of ineligibility continues without regard to the fact that the "lump-sum" may be exhausted leaving the family in desperate need of ADC benefits to meet the basic costs of survival. Plaintiffs challenge these rules as being inconsistent with the controlling and plainly worded provisions of the Social Security Act, which limit the application of such a "lump-sum" disqualification to ADC recipients who have additional earned income. These rules also impermissibly classify personal injury awards as "income" rather than as "resources." Plaintiffs sue for injunctive and declaratory relief for themselves and all others similarly situated.

II. JURISDICTION

1. Jurisdiction over plaintiffs' claims against both defendants is conferred on this Court by 28 U.S.C. § 1331; jurisdiction over plaintiffs' claims against Defendant Lukhard is also conferred by 28 U.S.C. § 1343.

2. Plaintiffs' action for declaratory and injunctive relief is authorized by:

a. 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments;

b. 42 U.S.C. § 1983, which provides for actions to redress the deprivation of rights, privileges, and immunities secured by the Constitution and laws, by any person acting under color of state law;

c. 5 U.S.C. §§ 701-706, which provide for judicial review of federal agency actions which are inconsistent with controlling federal law.

III. PARTIES

3. Plaintiff Ona Mae Reed lives with her minor child at P.O. Box 203, Rosedale, Virginia, and is a resident and citizen of Virginia.

4. Plaintiff Sallie Long lives with her three minor children at 486 Jefferson Street, Danville, Virginia, and is a resident and citizen of Virginia.

5. Plaintiff Ruth Wilcher lives with her two minor children at 1308 Liberty Road, N.E., Roanoke, Virginia, and is a resident and citizen of Virginia.

6. Defendant William L. Lukhard is Commissioner of the Virginia Department of Welfare (hereinafter "Welfare") and, as such, is charged with the statewide supervision of the ADC Program in Virginia. He is responsible for the administration of the ADC Program and for adopting and implementing ADC policies, rules, and regulations which must comply with controlling federal law.

7. Defendant Margaret Heckler is Secretary of the Department of Health and Human Services (hereinafter "HHS") and, as such, is charged with the federal operation of the ADC Program.

She is responsible for the adoption and implementation of ADC policies, rules, and regulations at the federal level and for approval of ADC plans submitted by individual states as required by federal law.

IV. CLASS ACTION ALLEGATIONS

8. The named plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. They represent two classes consisting of:

***

> (2) all persons in Virginia whose ADC benefits have been, continue to be, or in the future will be denied, reduced, or terminated because of receipt by such persons, or by members of their families, of "lump-sum" resources derived from personal injury and other insurance settlements or awards, which lump-sums are treated under defendants' policies as "income" rather than "resources."

9. The classes referred to in Paragraph 8, above, are so numerous that joinder of all members is impracticable. At least 400 cases have been closed or ADC denied because of the lump-sum rule since October, 1981, and the classes increase in size on a daily basis. There are questions of law and fact common to each class member. Questions of law common to the first class include whether defendants' regulations unlawfully extend the application of provisions of 42 U.S.C. § 402(a)(17) to persons not subject to the provisions of that section, in violation of 42 U.S.C. §§ 602(a)(7) and 602(a)(10). All members of the second class defined in paragraph 8, above, are directly affected by defendants' treatment of proceeds from personal injury and other insurance settlements as "income" rather than "resources" in violation of controlling federal law; as such, all members of the class share in common the same questions of law and fact with respect to the policies of the defendants in implementing the federal law. The claims plaintiffs bring are typical of the claims of each class member, and they will fairly and adequately protect the interests of the class. Defendants have acted or failed to act on grounds

generally applicable to each class member, thereby making appropriate final declaratory and injunctive relief with respect to each class member, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

V. STATUTORY FRAMEWORK

10. (a) Virginia participates in the ADC Program established by Congress "[f]or the purpose of encouraging the care of dependent children in their homes or in the homes of relatives by enabling each state to furnish financial assistance...to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life..." Title IV-A of the Social Security Act, 42 U.S.C. § 601.

(b) As a result of its participation, Virginia must furnish ADC benefits to all eligible Virginia applicants or recipients and must do so with reasonable promptness. 42 U.S.C. § 602(a)(10).

11. Federal law and regulations provide that, in determining need and the amount of ADC assistance the state will provide, the state must take into account and consider, separately, the income and resources available to the ADC family. 42 U.S.C. § 602(a)(7); 45 C.F.R. § 233.20(a)(3)(ii)(D).

12. When an ADC family with earned income receives nonrecurring "lump-sum" income, federal statutes and regulations provide that the income is considered available to meet current and future needs of the family for a specified period of time, regardless of whether the income is exhausted prior to the expiration of that time. 42 U.S.C. § 602(a)(17); 45 C.F.R. § 233.20(a)(3)(ii)(D).

***

14. When a family is in possession of resources, the family is eligible or ineligible for ADC, with respect to such resources, depending on whether the resources are exempt or non-exempt and depending on whether the value of non-exempt resources exceeds certain specified limits. 42 U.S.C. § 602(a)(7); 45 C.F.R. § 233.20(a)(3)(i).

15. Defendant Lukhard has promulgated rules and regulations in Virginia's ADC Program which result in treatment of the proceeds of insurance settlements as "lump-sum" income to such

recipients rather than resources in violation of federal law. The Virginia lump sum rules and regulations, published at ADC Manual § 305.4.C. pp. 11-11d, are attached hereto as Exhibit 1 and incorporated by reference herein.

VI. FACTS RELEVANT TO THE NAMED PLAINTIFFS

A. FACTS RELEVANT TO PLAINTIFF ONA MAE REED

16. Plaintiff Ona Mae Reed and her two minor children, age 15 and 10, were receiving ADC benefits of $233.00 per month in June, 1982. She and her family were not in receipt of earned income or any income other than her ADC benefits.

17. On or about June 16, 1982 Plaintiff Reed received a worker's compensation lump-sum settlement in the amount of $5,400.00, after the payment of $600.00 in attorney's fees. This settlement was for injuries suffered by Plaintiff Reed in a fall at her job on July 31, 1980. This accident resulted in blood clots in her leg which required an initial hospitalization of 19 days, and a subsequent hospitalization in January, 1982, when a second blood clot developed.

18. Plaintiff Reed promptly reported the worker's compensation settlement to the local Welfare Agency, Russell County Department of Social Services.

19. In July, 1982, Plaintiff Reed received notice, dated July 9, 1982, that under Defendants' lump-sum policies she and her two minor children were found ineligible for ADC and a period of ineligibility extending 20 months through March, 1984, was established.

20. Prior to receiving said notice of the 20 month ineligibility period, Plaintiff Reed had almost completely expended the proceeds from her worker's compensation settlement referred to in paragraph 17 above. Substantial portions were spent on the purchase of needed items such as the basic living expenses of shelter, food, and clothing for plaintiff and her children. Approximately $2,700.00 of the money was spent on a used car and on automobile insurance, taxes, and related expenses. Some of the money was spent to purchase used household appliances including a used washing machine, refrigerator, and vacuum

cleaner. Part of the money was also spent on the repayment of outstanding loans and bills, including $500.00 owed in attorney's fees for Plaintiff Reed's divorce. By August, 1982 the entire worker's compensation settlement had been exhausted.

21. In July or August, 1982, Plaintiff Reed attempted to work as a waitress, but was forced to stop after only three weeks, due to problems with her leg which had been injured in the July, 1980, accident.

22. From August 1982, when Plaintiff Reed's health forced her to stop waitressing, through March, 1983, she and her two children have had no means of support except as described in paragraph 25 below.

23. Plaintiff Reed suffers from asthma, bronchitis, blood clots in her leg, high blood pressure, ulcers and a nervous disorder, which require treatment with prescription medications, but Plaintiff Reed has had no funds with which to purchase these medicines since ADC and Medicaid were terminated in July, 1982.

24. Between August, 1982, and March, 1983, the sole means of support for Plaintiff Reed and her minor children consisted of $199.00 in Food Stamps, $175.00 in rental assistance, $57.00 in utility allowance from rental assistance, $336.00 in fuel assistance during the winter of 1982-1983, and $11.25 per week in child support from the father of her infant daughter, Janice Kay Morgan. Plaintiff Reed has never received child support from the father of her infant daughter, Billie Christine Reed, because the father deserted prior to Billie's birth and his whereabouts remain unknown.

25. Plaintiff Reed's infant daughter Janice did not return to school in September, 1982, because Plaintiff Reed could not afford to buy her the things she needed to return to school. On March 15, 1983, plaintiff's daughter Janice married and moved out of her mother's home.

26. Although Plaintiff Reed's Food Stamp allotment and rental assistance generally covers the purchase of food and pays for the rent, her utility allowance of $57.00 is insufficient to cover the monthly electric bill, including costs of electric heating, which averages between $85.00 and $95.00 per month. On March 31, 1983, Plaintiff Reed received a disconnect notice from

Appalachian Power Company based upon an overdue bill of $184.00. Using her entire utility allowance and money borrowed from her parents, Plaintiff Reed was able to avoid the power cutoff; however, $107.00 of this bill remains overdue, and Plaintiff Reed may be unable to make sufficient payment next time to prevent a cutoff.

27. Starting in April, 1983, the sole means of support available to Plaintiff Reed and the infant daughter who continues to live with her has been $139.00 in Food Stamps, $175.00 in rental assistance, and $57.00 in a utility allowance from rental assistance.

28. Plaintiff Reed has no money with which to purchase non-food items such as soap, detergent and toilet articles. She and her child need clothing which they cannot afford to buy.

Although Plaintiff Reed needs to see a doctor more frequently, she has not been able to afford to see a doctor since December, 1982. Without the ability to pay the automobile insurance due in May, 1983, and the ability to purchase the automobile sticker due since March, 1983, Plaintiff Reed faces loss of her ability to drive which is her only source of transportation.

29. As of March, 1983, Plaintiff Reed and her minor child met all lawful federal and state criteria for eligibility for ADC benefits in Virginia and would be receiving ADC benefits but for defendants' challenged lump-sum rule.

B. FACTS RELEVANT TO PLAINTIFF SALLIE LONG

30. Plaintiff Sallie Long, her husband, James E. Long, and three minor children, age 16, 14, and 9, were receiving ADC benefits in April, 1982. Plaintiff and her family were not in receipt of earned income or any income other than her ADC benefits, except as described in paragraph 45, below.

31. On or about April 20, 1982, Mr. Long received an insurance settlement in the amount of $10,245.95, after the payment of attorney's fees and medical bills. The settlement was for personal injuries Mr. Long had suffered in an automobile accident during April, 1981.

32. The insurance settlement was reported to the local Welfare Agency, Danville Bureau of Social Services.

33. Under Defendants' lump sum policies, Plaintiff Long, her husband, and their three minor children were found ineligible for ADC, their ADC case was closed June 1, 1982, and a period of ineligibility extending 27 months through October, 1984, was established.

34. Between April, 1982 and October, 1982, Mr. Long exhausted the proceeds of his insurance settlement referred to in paragraph 31 above. $4,000.00 of the money was spent on the downpayment to purchase a home with a purchase price of $16,000.00; some of the money was spent by Mr. Long to purchase a used car for $600.00, licenses, insurance coverage and gasoline. He also spent much of the money on basic living expenses such as food, clothing, shelter (rent and mortgage payments), utilities, and medical expenses. The entire insurance settlement has been spent at this time.

35. On or about October 6, 1982, Plaintiff and her children were deserted by Mr. Long, leaving them without means to provide for the necessities of life.

36. Since being deserted by her husband, Plaintiff Long and her three children have had no means of support except as described in paragraph 45 below. She has looked for work, but due to the present economic conditions and her lack of skills and transportation she has been unable to find a job.

37. The Danville Juvenile and Domestic Relations District Court has ordered Mr. Long to pay $25.00 a week child support and $25.00 a week spousal support. A copy of this order is attached hereto as Exhibit 2, and incorporated herein by reference. To date, Plaintiff Long has not begun receiving payments as Mr. Long is out of work.

38. Plaintiff Long applied for emergency assistance at the Danville Bureau of Social Services on November 24, 1982. At that time she owed $576.48 plus late charges on the mortgage of her home. Her utilities were disconnected after her husband left in October, 1982. The cost of reconnection would have been $335.99. She was denied emergency assistance because the local agency's plan only provides for a one time payment for shelter not to exceed $250.00.

39. Because she was without income, Plaintiff Long reapplied for ADC benefits on November 24, 1982. She was denied because

she was "still in a period of ineligibility due to lump sum payment received on April 20, 1982 of $10,345.95 paid to James Edward Long...." See local agency's decision attached hereto as Exhibit 3 and incorporated by reference herein.

40. On December 6, 1982, Plaintiff Long filed a timely appeal from the local agency's denial of ADC and General Relief.

41. On January 12, 1983, Defendant Lukhard's hearing officer held a fair hearing on Plaintiff Long's appeal and received a summary of the case from the local agency, attached hereto as Exhibit 4 and incorporated by reference herein.

42. On January 24, 1983, Defendant Lukhard's hearing officer issued a fair hearing decision which affirmed the local agency's decision, attached hereto as Exhibit 5 and incorporated by reference herein.

43. On February 1, 1983, Plaintiff Long, by counsel, filed a further timely appeal from the hearing officer's decision to the Defendant Lukhard's State Board, receipt of said appeal was acknowledged for State Board review on February 22, 1983, but the State Board has failed to date to take any timely action on said appeal in contravention of federal administrative promptness regulations set forth at 45 C.F.R. § 205.10(a)(16).

44. Plaintiff Long and her children went from October, 1982, to January, 1983, without utility service such as electricity, gas, and water. Finally, in January, 1983, local churches heard of her plight and paid her past due mortgage payments and had her utilities reconnected.

45. Plaintiff Long is currently receiving $200.00 per month from two tenants who rent rooms in her home. This money is used to pay the utility bill and the mortgage payment, but it is never enough to pay the bills in full. Plaintiff Long has had to cancel her life insurance policies, and her children are going without school supplies, needed shoes, and clothing. She walks everywhere she goes because she has no money for transportation.

46. Although Plaintiff Long receives approximately $237.50 per month in food stamp benefits, she is unable to purchase non-food items such as soap, detergent and toilet articles and has been dependent upon charity for her survival.

47. As of March, 1983, Plaintiff Long and her children met all lawful federal and state criteria for eligibility for ADC benefits in

Virginia and would be receiving ADC benefits but for defendants' challenged lump-sum rule.

C. FACTS RELEVANT TO PLAINTIFF RUTH WILCHER

48. Plaintiff Ruth Wilcher and her two minor children, age 16 and 9, were receiving ADC benefits of $255.00 per month in October, 1982. She and her family were not in receipt of earned income or any income other than her ADC benefits.

49. Prior to October, 1982, Diane Marie Terry, the infant daughter of Plaintiff Wilcher, was injured in an automobile accident. As a result of this accident, a personal injury claim was brought on her behalf, and on or about October 5, 1982, this claim was settled for $15,000.00, and the settlement was approved by the court. Pursuant to the court's order Miss Terry's attorney was paid $5,000.00 from the proceeds for attorney's fees; $9,300.00 was deposited by the clerk of court in a trust account, subject to court control, for the benefit of Diane Marie Terry; and $700.00 was turned over to Plaintiff Wilcher to be spent on immediate needs of Diane Marie Terry. A copy of the court's order is attached hereto as Exhibit 6.

50. Plaintiff Wilcher used approximately $520.00 to replace her daughter's bedroom furniture which had been through two fires and which was in very poor condition; she used the remainder of the $700.00 for clothes for her daughter.

51. Because of the Defendant's lump sum policies, the Roanoke City Department of Welfare notified Plaintiff Wilcher in November, 1982, that they were proposing to terminate the grant to her and her two children because of the $700.00 payment from the settlement of one child's personal injury claim, Plaintiff Wilcher appealed this proposed action, and her $225.00 per month benefits were continued pending the decision on appeal. She also inquired of the court concerning the meaning of the settlement approved for her daughter. A copy of the court's response is attached hereto as Exhibit 7.

52. After a December 14, 1982 hearing, Defendant Lukhard's hearing officer issued a decision upholding the termination decision of the local agency and approving their determination that Plaintiff Wilcher's family would be ineligible for any benefits for two months and eligible for only partial benefits in the third

month. A copy of the hearing officer's decision is attached hereto as Exhibit 8. Accordingly the local agency decided that the December payment made pending the appeal was an improper payment which would have to be recouped; that Plaintiff Wilcher would be ineligible for any benefits for herself or her children during January; and that she would receive only a partial ADC payment during February.

53. During January, Plaintiff Wilcher and her family had no income and had to rely upon friends and family to pay essential bills such as rent and upon food stamps for some of their needed food. During February, the family received ADC benefits of $121.00 and again had to rely on friends and relatives and on food stamps to meet their essential expenses. Plaintiff Wilcher and her two children are now receiving $229.50 per month in ADC benefits, a figure the local agency arrived at by subtracting from the $255.00 grant the $25.50 recoupment for the alleged overpayment in December, 1982.

54. Plaintiff Wilcher and her family will continue to receive reduced benefits for approximately 10 months until the full $255.00 December payment has been recouped; the reduction is caused by the Defendants' application of their improper lump sum rules; and Mrs. Wilcher will be unable to recover what has been and continues to be wrongfully withheld.

VII. INJUNCTIVE RELIEF CONSIDERATIONS

55. Plaintiff Reed has completely exhausted her resources and has no resources or income with which to meet the costs of the basic necessities of life. The food stamp benefits and rental assistance with utility allowance which Plaintiff Reed receives do not adequately meet the costs of even the basic necessities of life for plaintiff and her minor child. Plaintiff is at risk of having her utilities terminated for inability to pay her electricity bill, which includes electric heat for her house. Plaintiff requires prescription medications and physician's care for her asthma, bronchitis, blood clots, high blood pressure, ulcers, and nervous condition, but she has been unable to afford to see a doctor at all since December, 1982. Plaintiff Reed has been unable to obtain any of her prescription medications since July, 1982, when ADC and Medicaid were terminated, except for one bottle of breathing medicine bought by her sister in February, 1983, which is now

gone. Moreover, Plaintiff Reed and her minor child are without money with which to pay for basics, such as clothing, necessary transportation, food or incidentals not covered by plaintiff's food stamp benefits. Plaintiff Reed is experiencing irreparable harm and by virtue of her lack of access to medical attention she is at risk of futher and much more substantial and irreparable harm if the injunctive relief she seeks is not granted.

56. Plaintiff Long and her estranged husband have exhausted the proceeds of the insurance settlement except for the equity in the jointly owned home and the car owned by Mr. Long mentioned in paragraph 35 above. Plaintiff Long's limited income from boarders is insufficient to meet the costs of even the basic necessities of life for plaintiff and her three minor children. Plaintiff will soon be subject to foreclosure for non-payment of her mortgage and to termination of all utilities. Moreover, plaintiff is without money with which to pay for basics, such as clothing, necessary transportation, food or incidentals not covered by plaintiff's food stamp benefits. Plaintiff Long and her three minor children will experience irreparable harm if the injunctive relief is not granted.

57. Plaintiff Wilcher presently receives, and for approximately the next 10 months will continue to receive, reduced ADC benefits which are not adequate to meet the costs of even the basic necessities of life for Plaintiff Wilcher and her two minor children. The reduction in ADC benefits reflects the agency's monthly recoupment for the overpayment which allegedly resulted from the application of the lump-sum rule. Plaintiff Wilcher and her two minor children are without money with which to pay for basics, such as clothing, necessary transportation, food or incidentals not covered by plaintiff's food stamp benefits or reduced ADC benefits. Plaintiff Wilcher and her two minor children will experience irreparable harm if the injunctive relief is not granted.

58. The harm to plaintiffs and their proposed class, if injunctive relief is not granted, far outweighs the harm to defendants if injunctive relief is granted.

59. Plaintiffs and their proposed class have a likelihood of success on the merits so as to justify injunctive relief by this Court.

60. Plaintiffs and their proposed class have no adequate remedy at law.

VIII. CLAIMS FOR RELIEF

***

SECOND CLAIM FOR RELIEF — STATE DEFENDANT

65. Plaintiff realleges and incorporates by reference paragraphs 1-60, above.

66. Defendant Lukhard's policy of counting the money received from a personal injury settlement as income rather than a resource violates the requirements of 42 U.S.C. §§ 602(a)(7), 602(a)(10), and 602(a)(17).

WHEREFORE, Plaintiffs prays that this Court:

1. Assume jurisdiction over this matter.

2. Certify this action as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the classes defined at paragraph 8, above.

3. Declare the defendants' policies challenged herein to be violative of plaintiffs' rights under 42 U.S.C. §§ 602(a)(7), 602(a)(10) and 602(a)(17).

***

5. Preliminarily and premanently enjoin Defendant Lukhard from applying the "lump-sum" provision of ADC Manual § 305.4C and/or 45 C.F.R. § 233.20(a)(3)(ii)(D) to persons who did or will receive proceeds of insurance settlements for personal injury.

6. Order Defendant Lukhard to identify and notify each former or present applicant for or recipient of ADC who have been denied ADC benefits or had ADC benefits terminated under the provisions of Virginia's ADC Manual, § 305.4C, pp. 11-11d, that his/her eligibility for past or current benefits may have been incorrectly determined, and that he/she may now reapply for present and future ADC benefits and seek retroactive payment for benefits which may have been wrongfully denied.

7. Grant such other and further relief as this Court may deem just and proper, including the award of attorneys' fees for the successful prosecution of this action under 28 U.S.C. § 2412 and 42 U.S.C. § 1988.

ONA MAE REED, SALLIE LONG,
RUTH WILCHER, *et al.*

— By Counsel —

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

(Virginia's ADC Regulation § 303.5, dated 7/81 from Plaintiffs' Brief in Support of Preliminary Injunction.)

303.3-303.5
ADC MANUAL 7/81 Page 2

303.5 LIQUIDATION OF ASSETS —

***

Any cash received by a recipient in a lump sum, from real and personal property, such as an insurance settlement, or sale of real estate is not recurring income and must be counted in relation to the $600 allowable reserve, as soon as administratively possible, but no later than the second month following the month in which the lump sum was received* to avoid error in eligibility and/or the amount of the money payment.

If the caretaker elects to exclude a child from the assistance unit (see Section 302.6), any resources designated for that child, are disregarded in determining eligibility for the remaining child(ren) and caretaker. Resources which might be designated for a child could include trust funds, insurance settlements, lump sum social security payments, accumulation of child's own earned income or an accumulation of funds from any source of designated income. Such resources must be in a separate identifiable account established in the name of the child. The receipt of funds from all of the above *except* trust funds will be considered as a change in circumstances on the day it is received if it is designated for a non-excluded child. (See Section 303.3 and 303.5.)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit E to Plaintiffs' Brief in Support of Preliminary Injunction (Senate Finance Committee Report #97-0139, 97th Cong., 1st Sess. (1981)).

LEGISLATIVE HISTORY
P.L. 97-35
[page 436]

***

Count lump-sum payments. — Under present law, any payments that meet the definition of income (*e.g.*, retroactive social security benefits) are counted as income in the month of receipt and any of the payment that is not spent in that month is usually considered a resource in the months thereafter.

The committee amendment would require that large payments, together with other income remaining after the application of disregards, be considered available to meet ongoing needs in the AFDC program. If such income exceeds the standard of need, the household would be ineligible for aid. Any amount of the income that exceeds the monthly needs standard would be divided by the monthly needs standard, and the household would be ineligible for aid for the number of months resulting from that calculation. Any remaining amount would be counted as income in the first month following the period of ineligibility.

***

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit L to Plaintiffs' Brief in Support of Preliminary Injunction (Virginia's ADC Regulation on Exempt Resources).

NEED AND AMOUNT OF ASSISTANCE	ADC MANUAL	CHAPTER 300
PROVISIONS REGARDING PROPERTY	1/83	303.1-303.3

303.3 PROPERTY IN EXCESS OF ALLOWABLE RESERVES — When an otherwise eligible child and his parent(s) living in the home have cash and/or liquid assets, other than the reserved items listed above, totaling more than $600, the resource must be examined to determine ownership and unless designated as a resource to one of the eligible children, eligibility will not exist (see Section 302.6).

All loans, except those obtained for current living expenses, will be considered an available resource. Current living expenses shall include items such as the cost of food, clothing, shelter and other day to day living expenses for the current month in which the loan was received. For example, a loan obtained to buy a car is considered a resource. A loan received to pay current rent is considered income. See 305.4C. 05.4C.

When any of the reserved items listed in 303.2 above OR ANY OTHER REAL OR PERSONAL PROPERTY OWNED BY AN INDIVIDUAL WHOSE RESOURCES ARE CONSIDERED IN DETERMINING ELIGIBILITY ARE SOLD OR transferred into cash or other liquidable assets, these items are resources and will be considered in relation to the allowable reserve.

Example #1:

Ms. C sells her exempted vehicle and receives $500 from the sale. The agency will consider this sum of money in relation to the allowable reserve.

Example #2

Ms. H loses her exempted home as a result of a fire. She receives an insurance settlement in the amount of $20,000. This money is a resource and will be considered in relation to the allowable reserve.

***

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit M to Plaintiffs' Brief in Support of Preliminary Injunction (Notice from Defendant Lukhard Regarding Supplement #1 to ADC Transmittal #82).

December 27, 1982

AID TO DEPENDENT CHILDREN

Supplement 1 to
ADC Transmittal #82

The attached material consists of revisions to the ADC Manual as a result of a recent court decision in the following areas:

A. Section 303.3 has been revised to reflect that when any resource is sold or converted to cash, the proceeds are to be considered as a resource.

B. Section 305.4 has been revised to reflect that the proceeds derived from the sale or conversion of real or personal property are not considered a lump sum. For example, when an insurance policy owned by the assistance unit is cashed in or pays off, the money received will not be considered a lump sum.

The attached material is effective January 1, 1983 and is to be incorporated into the ADC Manual as follows:

Section 303.1-303.3, page 1, dated 1/83 (1 sheet) to replace Section 303.1-303.3, page 1, dated 7/82 (1 sheet).

Section 305.4, page 11, dated 1/83 (1 sheet) to replace Section 305.4, page 11, dated 7/82 (1 sheet).

/s/
William L. Lukhard

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

ANSWER OF THE STATE DEFENDANT

Comes now the State Defendant, William L. Lukhard, individually and in his official capacity as Commissioner of the Virginia Department of Social Services, and for his response to the complaint filed herein states as follows:

FIRST DEFENSE

1. The State Defendant admits the allegations contained in paragraphs 1 and 2 of the complaint.

2. The State Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3, 4, and 5 of the complaint.

3. The State Defendant admits only that he is the Commissioner of the Virginia Department of Social Services and that as the chief administrator he is responsible for statewide supervision of the ADC program; and denies each and every other allegation in paragraph 6 of the complaint.

4. The State Defendant admits the allegations contained in paragraph 7 of the complaint.

5. The State Defendant denies the allegations contained in paragraphs 8 and 9 of the complaint.

6. The State Defendant admits the allegations contained in paragraphs 10 and 11 of the complaint.

7. The State Defendant admits only that nonrecurring lump-sum income is considered to meet current and future needs of the ADC family for a specified period of time; and denies each and every other allegation contained in paragraph 12 of the complaint. Furthermore, the regulation speaks for itself.

8. The State Defendant admits only that the lump-sum policy extends to all ADC recipients without regard to receipt of earned income; and denies the allegation that the lump-sum policy was accurately stated in paragraph 12 as alleged in paragraph 13 of the complaint. Furthermore, the regulation speaks for itself.

9. The State Defendant admits the allegations contained in paragraph 14 of the complaint.

10. The State Defendant denies the allegations contained in paragraph 15 of the complaint.

11. The State Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 16 and 17 of the complaint.

12. The State Defendant denies the allegations contained in paragraph 18 of the complaint.

13. The State Defendant admits the allegations contained in paragraph 19 of the complaint.

14. The State Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of the complaint.

15. The State Defendant admits the allegations contained in paragraphs 32 and 33 of the complaint.

16. The State Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 34, 35, 36, and 37 of the complaint.

17. The State Defendant admits that Plaintiff Long applied for emergency assistance at the Danville Bureau of Social Services on November 24, 1982; and alleges that he is without knowledge or information sufficient to form a belief as to the truth of each and every other allegation contained in paragraph 38 of the complaint.

18. The State Defendant admits the allegations contained in paragraphs 39, 40, 41, and 42 of the complaint.

19. The State Defendant admits that Plaintiff Long filed a timely appeal to the State Board and that such appeal was acknowledged; and denies each and every other allegation contained in paragraph 43 of the complaint.

20. The State Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 44, 45, 46, 47, 48, 49, and 50 of the complaint.

21. The State Defendant admits that the Roanoke City Department of Welfare notified Plaintiff Wilcher of their proposed termination action, that Plaintiff Wilcher appealed the proposed action and that her benefits were continued pending the appeal; and is without knowledge or information to form a belief as to the truth of each and every other allegation contained in paragraph 51 of the complaint.

22. The State Defendant admits the allegations in paragraph 52 of the complaint.

23. The State Defendant is without knowledge or information to form a belief as to the truth of the allegations contained in paragraph 53 of the complaint.

24. The State Defendant admits that Plaintiff Wilcher will receive reduced benefits for approximately ten months; and denies each and every other allegation contained in paragraph 54 of the complaint.

25. The State Defendant denies the allegations contained in paragraphs 55, 56, 57, 58, 59, 60, 62, 64, 65, and 66 of the complaint.

26. The allegations contained in paragraphs 61 and 63 are not such as require an answer pursuant to the Federal Rules of Civil Procedure, but to the extent that they may be deemed to require such answer, the State Defendant denies the allegations contained therein.

SECOND DEFENSE

The State Defendant has at all times relevant to this complaint acted in good faith.

THIRD DEFENSE

The State Defendant has at all times relevant to this complaint

acted in a ministerial capacity to the federal defendant and is obligated to comply with the relevant federal statutes, regulations and interpretations thereof that are issued by the federal defendant.

WHEREFORE, the State Defendant, having fully answered, prays this Court dismiss this action against him, award it costs and attorney's fees herein expended and grant such further relief as the Court may deem appropriate.

Respectfully submitted,

WILLIAM L. LUKHARD, COMMISSIONER
VIRGINIA DEPARTMENT OF SOCIAL
SERVICES

BY: /S/

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(Certificate Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

ANSWER OF FEDERAL DEFENDANT

COMES NOW the Federal Defendant, MARGARET M. HECKLER as Secretary of the Department of Health and Human Services, and responds to the Complaint filed herein as follows:

1. Paragraphs 1 and 2 are admitted.

2. Federal Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations of paragraphs 3, 4, and 5.

3. Answering paragraph 6, it is admitted that Defendant William L. Lukhard is Commissioner of the Virginia Department of Social Services and believed that Defendant Lukhard, in his official capacity as Commissioner, is responsible for administration of Virginia's ADC program. The Federal Defendant is without sufficient information or knowledge to form a belief as to the truth of the other allegations contained in paragraph 6.

4. Answering paragraph 7, the Federal Defendant admits that Defendant Margaret M. Heckler is Secretary of the United States Department of Health and Human Services and that as such is charged with administering the Aid to Families with Dependent Children (AFDC) program pursuant to the provisions of 42 U.S.C. Section 601 *et seq.* Each and every other allegation of paragraph 7 is denied.

5. Answering paragraph 8, it is admitted that the named plaintiffs are bringing this action on behalf of themselves, but the Federal Defendant denies each and every other allegation of paragraph 8.

6. The allegations of paragraph 9 are denied.

7. Paragraphs 10 and 11 are admitted.

8. Answering paragraph 12, Federal Defendant admits that pursuant to Federal statute and implementing regulation nonrecurring lump sum income is deemed available to meet present and future needs of AFDC families in lieu of AFDC benefits; it is specifically denied that this "lump sum rule" applies only to AFDC families with earned income.

9. Answering paragraph 13, the Federal Defendant denies it has extended by regulation the provisions of Section 602(a)(17) or any other statute. Each and every other allegation of paragraph 13 is denied.

10. Paragraph 14 is admitted.

11. The allegations of paragraph 15 are denied.

12. Federal Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations of paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32.

13. Answering paragraph 33, the Federal Defendant admits only that pursuant to the "lump sum rule," 42 U.S.C. Section 602(a)(17), a period of ineligibility for AFDC benefits would be established for any AFDC family that received a nonrecurring lump sum that together with other countable income exceeded the State's monthly standard of need, which fixed period of ineligibility would be derived by dividing the total countable income in the month of receipt by the monthly need standard applicable to such family in that State.

14. Federal Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations of paragraphs 34, 35, 36, 37, and 38.

15. Answering paragraph 39, Federal Defendant references and incorporates its statement contained in paragraph 13 of its Answer; the Federal Defendant is without sufficient information or knowledge to form a belief as to the truth of the remainder of paragraph 39.

16. Federal Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations of paragraphs 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51.

17. Answering paragraph 52, the Federal Defendant admits only that States are required, pursuant to Federal AFDC

provisions, to recoup improper AFDC payments. The Federal Defendant references and incorporates its statement contained in paragraph 13 of its Answer, and is without sufficient information or knowledge to form a belief as to the truth of the remainder of paragraph 52.

18. Answering paragraph 53, the Federal Defendant admits only that States are required, pursuant to Federal AFDC provisions, to recoup improper AFDC payments; the Federal Defendant is without sufficient information or knowledge to form a belief as to the truth of the remainder of paragraph 53.

19. Answering paragraph 54, the Federal Defendant is without sufficient information or knowledge to form a belief as to whether Plaintiff Wilcher will receive reduced benefits and if so, for how long; the Federal Defendant denies each and every other allegation of paragraph 54.

20. Answering paragraph 55, the Federal Defendant denies any allegation that Plaintiff Reed is suffering irreparable, or any other, harm by reason of Federal Defendant's action; the Federal Defendant is without sufficient information or knowledge to form a belief as to the truth of the remainder of the allegations of paragraph 55.

21. Answering paragraph 56, the Federal Defendant denies any allegation that Plaintiff Long is suffering irreparable, or any other, harm by reason of Federal Defendant's actions; the Federal Defendant is without sufficient information or knowledge to form a belief as to the truth of the remainder of the allegations of paragraph 56.

22. Answering paragraph 57, the Federal Defendant denies any allegation that Plaintiff Long is suffering irreparable, or any other, harm by reason of Federal Defendant's actions. The Federal Defendant is without sufficient information or knowledge to form a belief as to the truth of the remainder of the allegations of paragraph 57.

23. Paragraph 58 is denied.

24. Paragraph 59 is denied.

25. Paragraph 60 is denied.

26. The allegations contained in paragraph 61 are not such as require an answer pursuant to the Federal Rules of Civil Procedure, but to the extent an answer may be required, the

Federal Defendant denies the allegations contained therein.

27. Paragraph 62 is denied.

28. The allegations contained in paragraph 63 are not such as require an answer pursuant to the Federal Rules of Civil Procedure, but to the extent an answer may be required, the Federal Defendant denies the allegations contained therein.

29. Paragraph 64 is denied.

30. The allegations contained in paragraph 65 are not such as require an answer pursuant to the Federal Rules of Civil Procedure, but to the extent an answer may be required, the Federal Defendant denies the allegations contained therein.

31. Paragraph 66 is denied.

WHEREFORE, Federal Defendant prays this Court will dismiss this action and award it attorneys' fees and costs expended herein and grant such further relief as the Court may deem appropriate.

Respectfully Submitted,

JOHN P. ALDERMAN
UNITED STATES ATTORNEY

/S/

E. MONTGOMERY TUCKER
ASSISTANT UNITED STATES ATTORNEY

(Certificate Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Defendant Lukhard's Answers to Plaintiffs' First Interrogatories.

DEFENDANT LUKHARD'S ANSWERS TO PLAINTIFFS' FIRST INTERROGATORIES

COMES now the state defendant, William L. Lukhard, Commissioner, Virginia Department of Social Services, by and through department staff who have researched the issues involved in plaintiffs' first set of interrogatories and who respond as follows:

Interrogatory No. 1: State the number of AFDC Assistance Units which have been terminated from the AFDC program in Virginia since October 1, 1981, because of the lump sum policy contained in § 305.4C of the Virginia AFDC Manual.

> *Response No. 1:* The exact number of assistance units terminated from ADC since October 1, 1981, due to § 305.4C of the Virginia ADC Manual is not available. Because the Department's computer system is programmed only to know the present status of cases, it cannot identify any cases which were previously terminated due to receipt of a lump sum, but were later reopened once the disqualification period had ended. Also, cases in three localities (Richmond, Fairfax, and Portsmouth) are not yet on the Department's computer system. Thus, any of their cases terminated due to the relevant lump sum provision will not be reflected in the Department's information. In talking with the regional specialists, it has been determined that this information cannot be obtained from the computer systems operated by these three agencies. The best information available to the Department indicates that *669 cases have been terminated* from ADC since October 1, 1981 because of

the lump sum policy contained in § 305.4C of the Virginia ADC Manual.

Interrogatory No. 2: State the number of AFDC applications which have been denied in Virginia since October 1, 1981, because of the lump sum policy contained in § 305.4C of the Virginia AFDC Manual.

Response No. 2: The explanation given for Interrogatory No. 1 is applicable here as well. The best information available to the Department indicates that *100 cases have been denied ADC* since October 1, 1981, because of the lump sum policy contained in § 305.4C of the Virginia ADC Manual.

Interrogatory No. 3: For those identified in answers to Interrogatory 1 and 2, state the number of cases which did not have earned income in the month during which the lump sum was received.

Response No. 3: The explanation given for Interrogatory No. 1 is applicable here as well. Furthermore, the Department's computer does not reflect which cases had no income in the month during which the lump sum was received. Computer information does reflect that 96 of *the cases reflected in Response Nos. 1 and 2 did not have earned income in the month of closure or denial.*

Interrogatory No. 4: For those identified in answers to Interrogatory 1 and 2, state the number of cases whose lump sum was a payment, award or insurance settlement for personal injuries sustained by a member of the assistance unit.

Response No. 4: The information requested is *not available* to the Department. To retrieve it would require a manual search of ADC cases by all 124 local agencies of welfare/social services.

Interrogatory No. 5: For those identified in the answer to Interrogatory 3, state:

(a) the average length of the disqualification imposed by § 305.4C.

(b) the number of cases which received AFDC benefits after the disqualification period.

(c) the number of cases which did not receive AFDC benefits after the disqualification period.

(d) the number of cases which are currently within the disqualification period imposed by the Virginia Department of Social Services (DSS).

Response No. 5: See the response to Interrogatory No. 4.

Interrogatory No. 6: For those identified in the answer to Interrogatory 4, state:

(a) the average length of the disqualification imposed by § 305.4C.

(b) the number of cases which received AFDC benefits after the disqualification period.

(c) the number of cases which did not receive AFDC benefits after the disqualfication period.

(d) the number of cases which are currently within the disqualification period imposed by the Virginia Department of Social Services (DSS).

Response No. 6: See the response to Interrogatory No. 4.

Interrogatory No. 7: Identify and describe all regulations, policies, interpretations, instructions, documents or communications issued by DSS or the U.S. Department of Health and Human Services regarding the applicatin of the October 1, 1981 lump sum rule to personal injury payments, awards or insurance settlements received by AFDC assistance units or applicants.

Response No. 7: See the documents enclosed herein.

Interrogatory No. 8: State the name(s) and position(s) of the person(s) answering these interrogatories.

Response No. 8:

Mr. I. Guy Lusk, Director
Division of Benefit Programs
Virginia Department of Social Services

Ms. Joan W. Farmer
Human Resources DP User Liaison
Division of Benefit Programs
Virginia Department of Social Services

Ms. Constance O. Hall, Chief
Bureau of Economic & Medical Assistance
Division of Benefit Programs
Virginia Department of Social Services

Ms. Carolyn Ellis, Supervisor
Bureau of Economic & Medical Assistance
Division of Benefit Programs
Virginia Department of Social Services

Respectfully submitted,

WILLIAM L. LUKHARD, COMMISSIONER
VIRGINIA DEPARTMENT OF SOCIAL SERVICES

BY: /S/

Carolyn Ellis, Supervisor
Bureau of Economic & Medical Assistance
Division of Benefit Programs
Virginia Department of Social Services

Gerald L. Baliles
Attorney General of Virginia

John A. Rupp
Senior Assistant Attorney General

101 North Eighth Street
Richmond, Virginia 23219
(804) 786-1021

(Jurat Omitted in Printing)

(Certificate Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Defendant Heckler's Answers to Plaintiffs' First Interrogatories.

DEFENDANT HECKLER'S ANSWERS TO PLAINTIFFS' FIRST INTERROGATORIES

Interrogatory #1

Identify and describe all regulations, policies, interpretations, instructions, documents, or communications regarding the application of the AFDC lump sum rule (45 CFR 233.20(a)(3)(ii)(D), effective October 1, 1981) to personal injury payments, awards or insurance settlements received by AFDC applicants or recipients.

The following documents are provided in response to Interrogatory #1.

Exhibit A

Document:	Action Transmittal No. SSA-AT-81-35
Location:	Office of Family Assistance
Person in charge of Document:	Jo Anne B. Ross Acting Associate Commissioner for Family Assistance
Date of Document:	November 5, 1981
Author:	Office of Policy and Evaluation, Office of Family Assistance
Length:	10 pages
Synopsis:	Document was issued to all States and provided answers to questions posed by States regarding the Interim final regulation implementing OBRA changes.

Exhibit B

Document:	Final Rule 47 Fed. Reg. 5656, February 5, 1982.
Location:	Office of Family Assistance
Person in charge of Document:	Jo Anne B. Ross Acting Associate Commissioner for Family Assistance
Date of Document:	February 5, 1981
Author:	Office of Family Assistance
Length:	38 pages
Synopsis:	Excerpt of final Federal rules published to implement the Omnibus Budget Reconciliation Act (P.L. 97-35) changes in the Aid to Families with Dependent Children Program.

Exhibit C

Document:	Code of Federal Regulations
Location:	Office of Family Assistance
Person in charge of Document:	Jo Anne B. Ross Acting Associate Commissioner for Family Assistance
Date of Document:	October 1, 1982
Author:	Office of Family Assistance
Length:	249 pages
Synopsis:	Excerpt of Code of Federal regulations revising Part 45, Chapter II implementing the lump sum rule in AFDC.

Exhibit D

Document:	April 1982 Edition of the Social Secruity Act
Location:	Office of Family Assistance
Person in charge of Document:	Jo Anne B. Ross Acting Associate Commissioner for Family Assistance
Date of Document:	April 1982
Author:	Congress
Length:	819 pages plus Appendix
Synopsis:	Excerpt of Title IV-A of the Social Security Act as amended enacting the lump sum rule at 402(a)(17).

Exhibit E

Document:	Excerpt of Public Law 97-35 enacting section 2304 "Treatment of Income In Excess of the Standards of Need; Lump Sum Payments."
Location:	Office of Family Assistance
Person in charge of Document:	Jo Anne B. Ross Acting Associate Commissioner for Family Assistance
Date of Document:	August 13, 1981
Author:	Congress
Length:	200 pages
Synopsis:	Excerpt of OBRA statute signed into law on August 13, 1981 enacting the lump sum provision.

Exhibit F

Document:	Office of Public Inquiry Fact Sheet
Location:	Office of Family Assistance

Person in charge of Document:	Jo Anne B. Ross Acting Associate Commissioner for Family Assistance
Date of Document:	July 6, 1983
Author:	Office of Policy and Evaluation
Length:	1 page
Synopsis:	Fact Sheet developed by CFA in response to public inquiry from Congressman Bosco. Subject: Federal Lump Sum Policy — insurance settlement.

Exhibit G

Document:	Memorandum — Policy Clarification — Lump Sum — Information
Location:	Office of Family Assistance
Person in charge of Document:	Jo Anne B. Ross Acting Associate Commissioner for Family Assistance
Date of Document:	May 24, 1983
Author:	Office of Policy and Evaluation
Length:	3 pages
Synopsis:	Policy clarification in the form of questions and answers regarding computation of the period of ineligibility as a result of the application of the lump sum rule.

Interrogatory #2

Identify or attach all documents referred to in Paragraph 5 of the May 27, 1983 Affidavit of Jo Anne B. Ross, in which HHS proposed the lump sum rule to Congress. For each document so identified, in addition to the information requested in the introduction above, state the date and manner in which the document was transmitted or presented to Congress and the individuals, committees, legislators or staff to whom the transmittal or presentation was made.

The following documents are provided in response to plaintiffs' Interrogatory #2

Exhibit H

Excerpt of testimony presented by former Secretary Richard Schweiker before the Senate Committee on Finance dated March 17, 1981. Pages 17-18 specifically address the AFDC lump sum proposal. Exhibit H, located in the Office of Family Assistance, is 103 pages in length.

Exhibit I

Excerpt of prepared statement by Richard S. Schweiker, Former Secretary of Health and Human Services before the Committee on Finance, United State Senate, Tuesday, March 17, 1981. Pages 34-35 specifically address the AFDC lump sum proposal. Exhibit I, located in the Office of Family Assistance, is 64 pages in length.

Interrogatory #3

State the name(s) and position(s) of the person(s) answering these interrogatories.

Jo Anne B. Ross
Acting Associate Commissioner
for Family Assistance,
Social Security Administration.

(Certificate Omitted in Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit F To Defendant Heckler's Answer to Plaintiffs' First Interrogatories (Office of Public Inquiry Fact Sheet — Federal Lump Sum Income Policy).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

July 6, 1983

TO:	OPI, 4A5 Annex
FROM:	OFA
RE:	Letter from Congressman Douglas H. Bosco, 1st District, California, re suggestion of his constituent, James Harlow, to change the OBRA lump sum provision
SUBJECT:	Federal Lump Sum Income Policy

BACKGROUND

The Congressman's constituent, James Harlow, received a $400 automobile accident insurance settlement resulting in the reduction of his AFDC benefit. The constituent believes that a welfare recipient should be able to keep any insurance settlement received or if this isn't possible, that the welfare agency should be permitted to take a small amount from each monthly check to account for the lump sum, rather than taking the entire amount at once. He suggests a change in law.

FACTS NECESSARY FOR RESPONSE

The Aid to Families with Dependent Children program (AFDC) is a needs based program and the Social Security Act, under section 402(a)(7) of title IV-A requires that all income and resources must be taken into consideration in determining need

and the amount of payment a family is eligible for unless expressly disregarded by statute. The statute does not permit an insurance settlement to be disregarded.

The Omnibus Budget Reconciliation Act of 1981 (OBRA) amended title IV-A of the Social Security Act, under section 402(a)(17), to require States to consider lump sum income received by AFDC applicants or recipients as available for support not only in the month of receipt but also to meet future needs. Thus, if the lump sum income from the insurance settlement exceeds the standard of need in the month of receipt, the family would be ineligible in that month. In addition, any amount of the income that exceeds the initial month's need standard would be divided by the monthly needs standard, and the family would be ineligible for aid for the number of months resulting from that calculation. Federal policy under this provision does allow for the period of ineligibility to be shortened, if the money had to be spent in connection with a life threatening circumstance, as defined by the State.

In enacting this provision, Congress felt that nonrecurring lump sum payments should be considered available to meet the ongoing needs of an AFDC family and that the prior treatment of lump sum payments had the effect of encouraging the family to spend such income as quickly as possible in order to retain AFDC eligibility.

Current Federal policy does allow States to consider a non-recurring lump sum payment that is in the nature of a windfall, such as an insurance settlement, as a resource rather than income. However, we are carefully reviewing whether to continue this policy. (Our understanding is that California has *not* elected the option to treat a windfall payment as a resource.)

OBRA under section 402(a)(7)(B) of the Act sets a statutory limit of $1,000 or less on the equity value of the resource an assistance unit may have and be eligible for AFDC. For States considering insurance settlements as a resource, this provision would be applicable and the payment would be measured against the resource limit.

Regardless of whether a State chooses to consider the lump sum insurance settlement as income or as a resource, the State is permitted to disregard any portion of the settlement that was used for the purpose for which it was paid. For example, if the

settlement was to meet the cost of unpaid medical bills, the portion used for that purpose is not required to be counted as income or as a resource in determining the amount of the AFDC payment.

***

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit G to Defendant Heckler's Answers to Plaintiffs' First Interrogatories (Memorandum Policy Clarification — Lump Sum, May 24, 1982).

DEPARTMENT OF HEALTH EDUCATION
AND WELFARE

May 24, 1982

Gordon M. Sherman
Regional Commissioner, SSA
Region IV — Atlanta

Linda S. McMahon
Associate Commissioner
for Family Assistance

Policy Clarification — Lump Sum — INFORMATION

This responds to your memorandum of March 8, 1982 requesting policy clarification regarding lump-sum income (45 CFR 233.20(a)(3)(ii)(D)).

1. *Question:* "The (Florida) Department of Health and Rehabilitative Services is concerned over application of the term 'life-threatening' in developing State policy and rules. Further guidance beyond that provided in the preamble to the regulations is requested on the definition of this term and the circumstances it is intended to cover."

   Answer: There is no Federal definition of a life-threatening" for purposes of the AFDC program. States have the flexibility to define this term using reasonable

standards. Circumstances which States may wish to cover include medical emergencies, natural disasters (e.g., fire or flood), death of a parent, etc.

2a. *Question:* "Can the ineligibility period be eliminated entirely?"

Answer: Yes. Under very exceptional circumstances, there does not always have to be a period of ineligibility. The State must always "compute" a period of ineligibility. However, for example, if a life threatening circumstance occurs in the same month the lump sum is received and all of the money is expended in connection with it, the family will not be ineligible for assistance because of the lump sum provision.

2b. *Question:* "On what basis is the length (of the ineligibility period) determined once the decision has been made to shorten (that period)?"

Answer: Federal regulations permit a State to shorten the period of ineligibility only when (1) the State has determined that a life-threatening circumstance exists, (2) the family budgeted its lump sum money properly by using it to meet essential needs, e.g., the State standard of need for a family of that size, (3) the family currently has no other income or resources sufficient to meet the life-threatening circumstance, and (4) of the lump sum left, if any, the family has expended or will expend some or all of it in connection with the life-threatening circumstance. Therefore, if the criteria above are met, the basis for recomputing the period of ineligibility would be the family's remaining income after subtracting the amount spent on essential needs and the amount spent or obligated for the life-threatening circumstance from the total income in the month it received the lump sum. However, if the family reapplies a few months after expending all of its lump sum income on a life-threatening circumstance, and the State determines that the family could have received assistance in those interim months, the State shall only pay AFDC prospectively.

2c. *Question:* "Must a spend down provision be incorporated?"

Answer: It is understood from telephone contact with the Region that the State is asking whether an assistance unit must spend some or all of its lump sum income before its period of ineligibility can be shortened.

The answer is no. States may recompute the period of ineligibility and make payments to applicants who reapply for AFDC when the lump has been or *will be expended* for a life-threatening circumstance. For example, if a family spends its remaining lump sum income for hospital care as a result of a life-threatening circumstance, it should be eligible for assistance upon reapplication if otherwise eligible. However, if the lump sum has not yet been expended, the State should assure itself that the remaining lump sum is actually obligated and will be spent for the purpose intended prior to granting assistance.

2d. *Question:* "Can examples be provided of how to shorten the ineligibility period?"

Answer: Yes. This is one example. In October an AFDC mother and her dependent child receive $1200 lump sum income and $300 other countable income (after the disregards); the State's need standard for two is $300. The assistance unit, therefore, is determined ineligible for 5 months beginning with the corresponding payment month, i.e., December, January, February, March and April ($1500 ÷ $300 = 5 months).

In February, the family reapplies for assistance because $600 of the lump sum was spent for medical expenses incurred when the child was in an automobile accident. If the family spent the money in accordance with State criteria, the period of ineligibility is recomputed. The first step is to subtract from the $1500 received in October the amounts of the lump sum spent for essential needs ($600) in the months prior to reapplication and for medical expenses ($600). Divide the remainder ($300) by the family's need standard ($300) in the month it received the lump sum. The result is that the family has sufficient income for one more month, and would be

eligible again in March. Thus, the period of ineligibility is shortened to 3 months.

2e. *Question:* "Will Quality Control be able to accept the State's determination of the length of the ineligibility period when the State has determined according to its own policy, that the ineligibility period should be shortened?"

Answer: Quality Control reviews are conducted in accordance with permissible State practice. If the State's practice concerning lump sum income is permissible under the approved State plan, Quality Control must accept the State's determination of the length of ineligibility including situations where the State has determined the ineligibility period should be shortened.

We hope the above information addresses Florida's concerns. If you want further clarification regarding lump sum income, please call Roy Simon of my staff (202) 245-3308.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit H to Defendant Heckler's Answers to Plaintiffs' First Interrogatories (Excerpts from Statement of Richard S. Schweiker, Secretary of Health and Human Services, Before the Senate Committee on Finance Hearing on Spending Cut of the Administration's Economic Recovery Program, Tuesday, March 17, 1981).

***

STATEMENT OF RICHARD S. SCHWEIKER,
SECRETARY OF HEALTH AND HUMAN SERVICES

Secretary Schweiker. Thank you, Mr. Chairman and Senator Long.

First, Let me thank you for your indulgence. I had a meeting with the President this morning. I'm sorry, I'm a little bit late, and I apologize for that.

I'd just like to take a few minutes to show some figures that I think tie into both the points that you are making here this morning, if the committee will indulge me.

Mr. Chairman, Senator Long, I think this is really the key chart in terms of why the Reagan Administration has put forth the cutting program that it has. Why our country is in trouble today and what we must do to correct it.

This basically shows the federal social program outlays from 1950 up to 1980. As you can see from the chart, they were something less than $20 billion back in 1950. Today, they are $300 billion.

As you can see from the escalating geometric progression of the chart, there has been a rapid acceleration rate program to assist families with children who have no other means of support. Before the first dollar of aid is paid, all other sources of income should be pursued and all available income counted.

It is interesting to note that the most prevalent and substantial sources of income not counted for AFDC purposes are provided by the Federal Government.

Nearly all AFDC recipients receive federal food stamps. Yet, the states include an amount for food as part of the AFDC payment.

We believe it is now time to halt this overlap of federal assistance. Our proposal is to allow states to reduce the amount of AFDC paid for food and shelter to the extent it duplicates these other programs.

We also require that income of stepparents, or those assuming the role of stepparents, be counted as available to children living in the same household.

The proposal will prevent those situations in which the children receive AFDC even while they are an integral part of a family grouping with substantial income.

We are also introducing proposals to insure that people assume more personal responsibility for planning the use of income to meet their needs.

When a large amount of money is received as a lump sum, for example, an inheritance, we will consider it as income available for support not only in the month it is received, but to meet needs over a period of time.

***

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit #1 to Plaintiffs' Brief in Support of Summary Judgment (HHS Memo to Carol H. Harper from Elizabeth Croog, dated 6/7/83; and Excerpt from "Handbook of Public Assistance Administration." 9/6/57).

OFFICE OF THE GENERAL COUNSEL
Social and Rehabilitation Service Division

June 7, 1973

Mr. Carl H. Harper
Regional Attorney
Region IV

Elizabeth A. Croog
Deputy Chief
Assistance Branch

Herbert Carr and Retha Carr, et al., v. *Herschel Saucier, et al.*

In response to your inquiry of May 1 on the above case, the 1964 interpretation referred to in the court order does represent our current policy in this area. That policy is consistent with our interpretation of the regulation in 45 CFR § 233.20(a)(3)(ii)(c), although we recognize that this is not the only possible reading of the somewhat ambiguous language in the regulation.

There seem to be two basic issues of Federal policy involved in the case:

(1) Does a lump sum OASI payment which represents an accumulation of past benefits constitute income?

It is clear from the explanation in Handbook IV-S-3120 (copy attached) that an initial OASI payment representing an accumulation of current monthly benefits, although received in a single sum, is to be treated not as a "lump sum" reserve but as

current income. This interpretation, although contained in Handbook material that was made obsolete by the publication of the regulations in 45 CFR § 233.20, still reflects current policy, as there is nothing specifically to the contrary in the regulation.

The language in the regulation that only such net income as is actually available for current on a regular basis will be considered. . ." (emphasis added) sic has not been interpreted literally — i.e., if a man has irregular earnings, they are still to be counted as income. In effect the regulation has always been interpreted as if it said, "Only such net income as is actually available for current use will be considered, and only such net income as is actually available on a regular basis will be considered as regularly available — e.g., support payments are not to be regularly deducted from the grant unless they are in fact regularly forthcoming. With regard to the specific issue in the present case, the initial OASI payment has been viewed as an accumulation of income paid on a regular basis, and, therefore, countable as income

(2) If the payment does constitute income, for what period is the State to count the income as currently available?

A literal reading of the language in 45 CFR § 233.20(a)(3)(ii)(c) would mean that unless the individual has his total income in hand when the assistance check is issued (or maybe even received), that income may not be deducted in determining the amount of his grant. This would mean that the only time income could be counted would be when it was received at the same time the assistance check was issued (or received). Otherwise the agency would be counting income that the individual had spent (or at least began to spend) and that was no longer available to him. This ridiculous result was clearly not intended by the regulation.

On the contrary, the regulation was intended to preclude the consideration of income that was, in fact, never available to the individual, or that had not been available to him for a substantial period of time. But when a person has, for example, regular earnings, the fact that he spends part of his paycheck before the assistance check arrives does not mean that the entire amount of the paycheck is not to be deducted in determining the amount of the assistance grant.

In fact, States have been permitted considerable administrative latitude in determining the period for which income is reflected in the assistance grant, with the result that income is not always (indeed, is not usually) deducted from the assistance check for the month the income is received and available to the individual. Instead, many States find it administratively simpler and more accurate to deduct the income received in one month from the assistance check for the next month or even for the month after that. This is permitted under Federal policy as a reasonable method of administration, as long as it is applied uniformly and consistently, and it presents no conflict with our interpretation of the regulation on available income.

In the present case, any other interpretation of that regulation would prohibit the agency from ever counting the initial OASI payment. That is, if the individual receives the payment one day, spends it the next, and reports it to the agency the third day, it would no longer be available to him and could never be considered. Even if he receives it, reports it, and then spends it, if it is spent by the time he receives his next assistance check, under the court's reading of the regulation, it could not be deducted from that check. This would, in effect, permit the individual to keep the initial payment as a windfall and continue to receive his full assistance grant.

We agree with the court that this would be a nice thing for the individual, but we do not agree that the State is required by the regulation to do this. Therefore, the method that we approved in 1964 of counting such payments is still approvable under the present regulation, as it has been interpreted.

Incidentally, we would point out that a proposed new regulation allowable resources is about to be published, which, in its present form, would also amend 45 CFR § 233.20(a)(3)(ii)(c) to read:

> "net income available for current use on a regular basis and currently available resources shall be considered: income and resources are considered available both when actually available and when the applicant or recipient has a legal interest therein and, has the legal ability to make them available but does not do so...."

This change will clearly raise additional questions of interpretation.

Handbook of Public Assistance Administration

(SUPPLEMENT FOR ADMINISTRATIVE USE)

Part IV — Eligibility and Payments to Individuals

3100-3199 — Need — 9/6/57

S-3120. Personal Property Reserves

A question was raised recently with regard to a proposed State policy "authorizing public assistance recipients to accumulate personal property up to $300 or $600, providing the accumulation is obtained as a lump sum payment from any source such as insurance, inheritance, old-age or survivor insurance, industrial compensation payments, etc." The following response was given:

> The general idea which seems to be behind this proposal is consistent with current Bureau policy. However, the method of carrying the proposal into effect might, under some circumstances, raise a question. We have not reviewed the State's manual but suggest that if the following conditions are met, no questions would be raised.
>
> The agency should make certain that the kind of resources considered "lump sum" payments are in fact in the nature of a nonrecurring sum or a windfall and *not* a resource that represents accumulated current income received in a single sum. For example, the initial OASI payment representing an accumulation of current monthly benefits would not under Bureau policy represent a "lump sum." In like fashion, industrial compensation payments representing accumulated weekly or monthly amounts would not be thought of as "lump sum" payments. On the other hand, a settlement of industrial compensation as the result of loss of hand or foot might represent a "lump sum" payment.
>
> The State policy should assume that assistance standards do not duplicate the purpose for which the lump sum is received. For example, if part of the

industrial compensation received is to cover medical care costs in connection with the injury, these services should not be duplicated under agency assistance standards.

What the State agency calls "personal property reserves," the Bureau designates under the heading of "Reserves" governed by Handbook Supplement IV-S-3120.3, which includes under the approvable limit not only "lump sum" cash but other liquid assets, i.e. real property, automobiles, etc. You will note that the above-cited statement indicates that the State agency is expected to designate also the purpose for which the reserve is permitted.

—Although the agency's letter mentions only public assistance recipients, we assume that the policy will apply to both the applicants and recipients. (Cleared with GC)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit #2 to Plaintiffs' Brief in Support of Summary Judgment (Excerpt from United States' Amicus Brief in Lockhart v. Harden).

DIATRI LOCKHART, *et al.*,	)	
	)	
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	)	CIVIL ACTION
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vs.	)	
	)	
	)	
RICHARD HARDEN, *et al.*,	)	
	)	
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BRIEF ON BEHALF OF THE
UNITED STATES AS AMICUS CURIAE

INTRODUCTION

As directed by this Court's order of March 19, 1974, the Secretary of Health, Education and Welfare (herein, "Secretary") will address the question of whether the challenged sections of Georgia's approved state plan under Title IV-A of the Social Security Act conform to federal requirements.

ARGUMENT

***

A. Under the applicable federal requirements, a lump sum child support arrearage payment must be considered as "income" and not as a "resource."

Plaintiff's theory rests on this Court's decision in *Carr* v. *Saucier*, C.A. No. 16, 704, May 29, 1973. In that case it was held that 45 C.F.R. § 233.20(a)(3)(ii)(c) requires that a lump sum OASDI payment representing accumulated monthly benefits be considered as a resource, not as income on the ground that such a payment is not "regularly available." The Secretary, however, has traditionally interpreted the regulation as requiring that such a lump sum payment (as opposed to a "true" lump sum payment such as an award of damages) be treated as income in the month received or in one of the two months thereafter and any portion then remaining be treated as a reserve (cash resource) in the following month. In effect, the regulation and its virtually identically worded predecessor Handbook provision, § IV-3131(7), have been interpreted as if they read "only such net income as is actually available for current use will be considered, and only such net income as is actually available on a regular basis will be considered as regularly available." A lump sum payment such as an OASDI lump sum or a child support arrearage payment is viewed as an accumulation of income accruing on a regular basis and therefore countable as income.

***

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit #4 to Plaintiffs' Brief in Support of Summary Judgment (Letter from M. Moleski, Acting Regional Commissioner, HHS, to B. Stumbras, Administrator, Wisconsin Department of Health and Social Services).

April 8, 1982

Our Reference: SD5A

Bernard Stumbras, Administrator
Division of Economic Assistance
Wisconsin Department of Health
and Social Services
P.O. Box 8913
18 South Thornton Avenue
Madison, Wisconsin 53708

Dear Mr. Stumbras:

This is to confirm the information discussed by telephone with Gary Kuhnen of your staff regarding the treatment of *income tax refunds* in determining eligibility for Aid to Families with Dependent Children and the amount of the assistance payment.

We have been advised by our central office that "Tax refunds must be treated as unearned income or *resources*, but State have flexibility of defining casual and inconsequential income."

"Windfall receipts" (such as gifts, inheritances, lottery winnings, or damage claims settlements) may be considered at the State's option, either as income subject to Federal policy in 45 CFR 233.20(a)(3)(ii)(D) or as a resource only. An accumulated monthly benefit such as veterans benefits or social security benefits is not considered windfall and must be treated as income.

Payments defined as income in 45 CFR 233.20 must, of course, be considered as income.

With regard to "casual and inconsequential" income, States have always been allowed some latitude in not counting small sporadic bits of income. This practice in most States covers such things as birthday gifts and other nonrecurring small amounts of money that do not realistically represent income available to meet the family's living needs.

Sincerely,

Marlene M. Moleski
Acting Regional Commissioner

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Unmarked Exhibit to Federal Defendant's Motion for Summary Judgment (Excerpt of Prepared Statement of Richard S. Schweiker Before the House Committee on Ways and Means, Subcommittee on Public Assistance and Unemployment Compensation. "Administration's Proposed Savings in Social Services Programs," March 11, 12, 1981).

***

The American people strongly oppose assistance going to those who can work, those who have other sources of income, and those who get as much — or more — on welfare as others get from working.

They believe, and this Administration agrees, that people who can take personal responsibility for themselves ought to do so.

But the American people are compassionate and generous toward those who through no fault of their own have no other choice but to rely on public programs to meet their basic needs. The kinds of changes I will be describing today need to be made to bring the public assistance programs in line with our country's concerns.

AFDC

In AFDC, the proposals are designed to improve the program by:

Limiting eligibiity to those most in need;

Strengthening work requirements;

Making AFDC a temporary safety net for those who are not economically independent;

Emphasizing individual responsibilities; and

Improving administration.

***

EMPHASIZING INDIVIDUAL RESPONSIBILITY

We are also introducing proposals to ensure that people assume more personal responsibility for planning the use of income to meet their needs. When a large amount of money is received as a lump-sum, for example, an inheritance, we will consider it as income available for support not only in the month it is received but to meet future needs. This would be accomplished by requiring that the lump-sum payment be divided by the State's standard of need. The recipient would be ineligible for assistance for the number of months that result from that computation.

As another matter of personal responsibility, we will require that AFDC overpayments be repaid. At the same time, of course, we will require States to make good on underpayments.

***

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit P to Affidavit of C. Hall, Attached to State Defendant's Cross Motion for Summary Judgment (Letter from L. Mapp, State Program Specialist, Department of Health and Human Services, to C. Hall, Virginia Department of Social Services, October 17, 1983).

October 17, 1983

Constance O. Hall, Chief
Bureau of Economic and Medical
Assistance
Division of Benefit Programs
Department of Social Services
8007 Discovery Drive
Richmond, Virginia 23288

Dear Ms. Hall:

In your letter of September 21, 1983, you requested a regulatory citation for differential treatment of lump-sum payments. I trust that this letter will clarify this issue.

Based on longstanding precedent, States have historically had the option to consider nonrecurring lump-sum payments as either unearned income or resources. With the implementation of OBRA, States continued to exercise this latitude.

According to a recent memo on this issue, signed by Ms. Jo Anne Ross, Associate Commissioner for Family Assistance, the general rule, as reflected in Section 402(a)(7) of the Social Security Act and Federal regulation at 45 CFR 233.20 (a)(3)(ii)(A), is that all income and resources, whether regularly or irregularly received or earned or unearned, of any individual applying for or receiving assistance, will be considered in determining eligibility and the amount of assistance with the exception of certain disregards

required or permitted under the Act or other Federal law. Under this rule, States have been permitted their choice of treating non-recurring or "windfall" lump-sum payments as income or resources. Examples of windfall nonrecurring payments are gifts, inheritances, lottery winnings, damage claim settlements, insurance death benefits, etc. Lump-sum payments that are actually an accumulation of current income received in a single sum are not considered windfall in nature and must be treated as income. For example, the initial OASDI payment representing an accumulation of current monthly benefits must be counted as lump-sum income and cannot be considered as a resource. Ms. Ross's memo further states that OFA Central Office is carefully reviewing whether or not to continue this policy on windfall payments. Beyond this, we are unaware of any regulatory provision that contains a specific reference to this issue.

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Should you have further questions do not hesitate to contact me.

Sincerely,

/S/
Lois J. Mapp
State Program Specialist

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit A to Federal Defendant's Response to Plaintiffs' Reply Brief (Draft Bill to Amend the Social Security Act).

A BILL

To amend the Social Security Act to increase the effectiveness and improve the administration of certain programs under the Act, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Social Welfare Amendments of 1981."

TITLE I — AMENDMENTS TO THE PROGRAM OF AID TO FAMILIES WITH DEPENDENT CHILDREN

Determination of Income and Resources for AFDC

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Treatment of Income in Excess of the Standard of Need

Sec. 104. Section 402(a) of the Social Security Act is amended by adding immediately after paragraph (16) the following new paragraph:

> "(17) provide that if a person specified in paragraph (8)(A) or (B) receives in any month an amount of income which, together with all other income for that month not excluded under paragraph (8), exceeds the

State's standard of need applicable to the family of which he is a member —

"(A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (B), divided by (ii) the standard of need applicable to such family, and

"(B) any income remaining (which amount is less than the applicable standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);"

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit B to Federal Defendant's Response to Plaintiffs' Reply Brief (Statement by Richard S. Schweiker, Secretary of Health and Human Services, Before the Committee on Ways and Means, House of Representatives, Wednesday, February 25, 1981).

MR. CHAIRMAN AND MEMBERS
OF THE COMMITTEE:

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I will be discussing today the specific issues and proposals relating to the social security program of old-age, survivors, and disability insurance (OASDI), the program of aid to families with dependent children (AFDC), the social services programs, and other related programs that we administer. We believe that these proposals are meritorious in and of themselves. Yet they are also a part, if only a small part, of the larger total program the President has outlined. Thus, as we discuss the specific proposals, we must keep in mind the importance of the overall economic recovery plan — the total package of initiatives to restore the health and vigor of the national economy. We must not lose sight of the benefits that will accrue to all citizens with enactment of the President's total program for economic recovery.

At the same time, I want to assure you that — as President Reagan stated so forcefully last Wednesday — none of these proposals represents in any sense a turning away from the conscience of the Nation, from our commitment to the needy, the aged, or others who justly depend upon existing public programs. The safety net of social programs upon which so many Americans must rely is not being weakened or withdrawn.

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Aid to Families with Dependent Children (AFDC)

In the AFDC program, we are proposing a number of changes.

— Some will target benefits to the families who have only minimal income in addition to their AFDC payment.

— Some will provide for better administration at the State level.

— Some will insure that those individuals who should financially support AFDC recipients do so, thereby reducing the burden on public assistance.

The safety net that AFDC provides to the group in our society which is most vulnerable — the children — will not be weakened.

Conclusion

In conclusion, Mr. Chairman and Members of the Committee, let me again urge you to take prompt action on all of the proposals that President Reagan outlined last week:

- These proposals are meritorious in and of themselves;
- They preserve the basic social safety net upon which needy Americans must rely; and
- They are necessary first steps toward strengthening the Nation's economy.

Again, I am pleased to have had this opportunity to discuss these matters with the Committee. I will be happy to respond to any questions you may have.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit C to Federal Defendant's Response to Plaintiffs' Reply Brief (Statement by Richard S. Schweiker, Secretary of Health and Human Services, Before the Committee on Budget, House of Representatives, Wednesday, March 18, 1981).

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

It is a pleasure to appear before you today to present the Reagan administration budget proposals for 1981 and 1982 for the Department of Health and Human Services.

This budget for 1982 totals $255.3 billion in budget authority and $250.7 billion in outlays, an increase of $27.5 billion and $21.5 billion respectively above 1981. While this budget contains increases and decreases, this net increase is necessary to preserve and maintain this Department's commitment to social safety net programs. Provision of these benefits to the most needy is one of the President's highest priorities.

***

This budget is an essential part of the President's program for economic recovery. As the president indicated, his program does not rely upon complex theories or elaborate government programs. Instead it recognizes the basic economic facts of life, and begins to move us, as humanely as possible, back toward economic sanity.

For this program to succeed, budget control is essential. The excessive past rates of increase in federal outlays have inhibited economic growth, raised the Nation's real tax burden, diverted resources from more productive private uses, and discouraged production and investment.

The revised budget for this Department is consistent with the principal goals of the President:

- First, it maintains our Nation's commitment to protecting benefits for retired workers and assisting those most in need of support from the Federal Government;
- Second, it slows the growth of Federal spending to move toward a balanced budget; and
- Third, it restores the States and their local governments to full and effective partnership in the Federal system.

The budget I present today reflects the significant policy changes needed to achieve these goals. Our budget and legislative proposals emphasize:

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- *Reform of entitlement program* to eliminate unintended benefits and to avoid unnecessary costs. Legislation will be proposed to limit unconstrained growth in the Medicaid program, to assure that the Aid to Families with Dependent Children program is available to the most needy only, to eliminate certain secondary Social Security benefits, and to tighten eligibility for Disability Insurance.

***

A major legislative initiative is being proposed for the AFDC program to better target welfare assistance on those most in need, to reduce incentives for remaining on assistance and to improve program management. The major provisions are:

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These and other changes will result in an estimated $1.0 billion in Federal Savings in 1982, growing to $1.3 billion by 1986. State and local government savings are expected to total approximately $850 million in 1982.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit D to Federal Defendant's Response to Plaintiffs' Reply Brief (Excerpts from Prepared Statement of Secretary Schweiker, U.S. Congress, Senate Committee on Finance, "Spending Reduction Proposals," March 17, 1981).

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AFDC as a temporary safety net

Our next set of proposals is aimed at assuring that the AFDC program is available only as a temporary program to assist families with children who have no other means of support. Before the first dollar of aid is paid, all other sources of income should be pursued and all available income counted. However, under current law, many actual and potential sources of income to AFDC recipients are ignored. We propose to close these loopholes.

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Emphasizing individual responsibility

We are also introducing proposals to ensure that people assume more personal responsibility for planning the use of income to meet their needs. When a large amount of money is received as a lump sum for example, an inheritance, we will consider it as income available for support not only in the month it is received but to meet future needs. This would be accomplished by requiring that the lump-sum payment be divided by the State's standard of need. The recipient would be ineligible for assistance for the number of months that result from that computation.

As another matter of personal responsibility, we will require that AFDC overpayments be repaid. At the same time, of course, we will require States to make good on underpayments.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit F to Federal Defendant's Response to Plaintiffs' Reply Brief (Excerpts from U.S. Congress, House Committee on Ways and Means. "Tax Aspects of the President's Economic Program" Part 1. 97-1 Feb. 24, 25; March 3, 4, 5, 25, 26, 27, 30, 31, and April 1, 2, 3, 7, 1981).

Lump-Sum Payments

Averaging Unearned Income Received as a Lump-Sum Payment

Current Law

Lump-sum payments that meet the definition of income (e.g., retroactive title II payments) are presently counted as income in the month of receipt and, to the extent retained, resources thereafter.

Proposed Change

Require that lump-sum payments be considered available to meet ongoing needs in the AFDC program: i.e., the lump-sum payment shall be considered as income in the month received. If such payment exceeds the standard of need, the household would be ineligible for aid. Any amount of the lump-sum payment that exceeds the monthly needs standard would be divided by the monthly needs standard, and the household would be ineligible for aid for the number of months resulting from that calculation.

Rationale

All income available to recipients of AFDC should be taken into account in determining benefit amounts and continued eligibility. This proposal will eliminate the disincentive for recipients to budget lump-sum amounts over a period of time while encouraging the use of these payments to meet basic needs.

Effects

This proposal will reduce or eliminate AFDC benefit payments to recipients receiving lump-sum amounts for the subsequent months in which the prorated lump-sum amount exceeds the State's AFDC needs standard.

Lump-Sum Payments

Number of AFDC Families Removed from Rolls **5,000**

Budget Impact (in $ Millions):

		FY 82	FY 83	FY 84	FY 85	FY 86
AFDC Benefits	Federal	-5	-5	-5	-5	-5
	State	-4	-4	-4	-4	-4
AFDC Admin.	Federal	Negligible Savings				
	State	Negligible Savings				
FOOD STAMPS	Federal	+2	+2	+2	+2	+2
NET IMPACT	Federal	-3	-3	-3	-3	-3
	State	-4	-4	-4	-4	-4

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

Exhibit G to Federal Defendant's Response to Plaintiffs' Reply Brief (Testimony of Kevin M. Aslanian, President, Welfare Recipients League, Inc., House Committee on Ways and Means, "Administration's Proposed Savings in Social Services Programs").

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Mr. Aslanian. OK. Let me touch on one or two things and highlight. One of the proposals is that income tax credit be considered during the year. We would oppose that. Either you abolish it or give it to us on the way back. But don't count it when we don't have it.

Do you follow what I am saying? I don't know if it is understandable.

One of the worst things that the administration is proposing is to pro rate lump-sum income. For example, a woman and a man were living together with three kids. They had a car accident; something happened to him. He got his disability. That ran out and he had a lawsuit. Finally, after a couple of years it is settled, and now he gets $1,500. The administration is proposing that you could use this $1,500 to support yourself as follows: in Mississippi you would be off of welfare for 12 months; in Texas you would be off of welfare for 10 months; in South Carolina you would be off of welfare for 10 months; in Tennessee you would be off of welfare for 10 months.

For 10 months people are going to have to live on $1,500. The fact that it is gone, who cares? The administration doesn't care.

Then a problem we have is the administration is suggesting that any working family who makes over 150 percent of the need standard would be ineligible for AFDC because they are making

too much. In Mississippi, that is any women who makes $180. In Puerto Rico — this is a family of four I am talking about — in Puerto Rico, $147; in Texas, $210; Alabama, $222; in South Carolina, $237.

I don't know if you believe that a family getting $222 is getting too much.

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Statement of Kevin M. Aslanian, President,
The Welfare Recipients League, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

49 Fed. Reg. 45558 (1984), Proposed Amendment to 45 C.F.R. § 233.20(a)(3)(ii)(F).

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SUMMARY

The Social Security Administration is proposing to amend regulations' relating to the Aid to Families with Dependent Children (AFDC) program under title IV-A and the adult categories under titles I, X, XIV or XVI (AABD) of the Social Security Act. This action is being taken (sic) promote fiscal savings, reduce the paperwork burden and increase State flexibility in the administration of these programs. Specifically, we propose to amend 45 CFR Parts 201, 205, 206, 225, 232, 233, 234, 235, 237.

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Counting Windfalls as Income — 45 CFR 233.20(a)(3)(ii)(F)

Counting Income Tax Refunds as Resources — 45 CFR 233.20(a)(3)(iv)(E)

The general rule in assistance programs is that all earned and unearned funds received by an assistance unit must be counted as income for the month of receipt except funds that are expressly disregarded as income in a Federal statute. However, under longstanding Federal policy for the AFDC and adult assistance programs, a State agency may treat nonrecurring payments which are in the nature of a windfall as resources instead of as income. A windfall is a sum that is not earned, does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum. A windfall might come from an inheritance, lottery winnings, or an income tax refund, but not title II Social Security or VA benefits. Social Security or VA benefits covering more than one month's benefits are instead examples of accumulated monthly income received in a single lump sum.

In reviewing the legislative history of OBRA, we believe that the Congress intended all lump sum payments (including windfalls) to be treated as income under the AFDC program. The Senate Finance Committee Report, No. 97-139, dated November 17, 1981, (on page 505) indicates that lump sum income should be "considered available to meet the ongoing needs of an AFDC family...". Given the intent of the lump sum provision to assure use of available funds in future months, we believe that windfall payments should be considered lump sum income. In the absence of the proposed change, the very type of payments Congress intended be counted and used to meet the family's future needs may not be budgeted for meeting future needs, if treated initially as a resource and not retained. Accordingly, for AFDC, we plan to classify payments in the nature of a windfall (with the sole exception of income tax refunds) as unearned income from a nonrecurring source and treat them as a lump sum in accordance with 45 CFR 233.20(a)(3)(ii)(F) unless otherwise disregarded, e.g., under the casual and inconsequential income policy at 45 CFR 233.20(a)(3)(iv).

With respect to income tax refunds, except for an Earned Income Credit payment, a tax refund recognizes that there was an overwithholding of taxes during the year. Under the AFDC program, since the $75 standard work expense disregard applies to gross income and represents all work expenses excluding child care, the actual amount of tax withheld has no bearing on the income counted or the amount of actual assistance payable to a recipient. Thus, since some portion of the income tax withholding may have exceeded, in combination with other work expenses, the $75 standard disregard, and therefore may have already been counted as income, it should not again be counted as income when it is returned to the recipient.

Therefore, for the AFDC program we are proposing to make an exception in the case of income tax refunds and require States to treat these refunds only as resources (liquid assets). However, any portion of a tax refund which represents an earned income credit (EIC) payment would still be considered as earned income in accordance with 45 CFR 233.20(a)(6)(ix)(C). The EIC portion of any tax refund (or any EIC payments for that matter) must be treated as earned income because the statute specifically requires

that such payments be considered as earned income (section 402(d) of the Social Security Act). When EIC payments are made in a single lump sum they are paid through the income tax collection system. Thus, in those cases, the payments would come in the form of a tax refund.

Neither the lump sum income change nor the $75 standard work expense change applies to the adult assistance programs. Therefore, we are not changing the policy in effect for these programs. At State option, these payments may be considered either as income or as a resource.

We estimate savings of up $1 million annually.

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PART 233 — [AMENDED]

F. Part 233 is amended as set forth below:

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§ 233.20 Need and amount of assistance.

(a)***
(3)***
(ii)***

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(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring lump sum income (including for AFDC, title II and other retroactive monthly benefits, and payments in the nature of windfall, e.g., inheritances or lottery winnings), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION
CIVIL ACTION NO. 83-0493

(Title Omitted in Printing)

51 Fed. Reg. 9191 (1986), Amendment to 45 C.F.R. § 233.20(a)(3)(ii)(F), Effective March 18, 1986.

SUMMARY: This final rule amends regulations relating to the Aid to Families with Dependent Children (AFDC) program under title IV-1 and the adult categories under titles I, X, XIV, or XVI (AABD) of the Social Security Act to promote fiscal savings, reduce the paperwork burden and increase State flexibility in the administration of these programs. Specifically, regulations at 45 CFR Parts 201, 205, 206, 225, 232, 233, 234, 235, and 237 are amended.

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Counting Windfalls as Income (Section 233.20(a)(3)(ii)(F) of the Final Regulations)

Counting Income Tax Refunds as Resources (Section 233.20(a)(3)(iv)(E) of the Final Regulations)

The general rule in assistance programs is that all earned and unearned funds received by an assistance unit must be counted as income for the month of receipt except funds that are expressly disregarded as income in a Federal statute. However, under longstanding Federal policy for the AFDC and adult assistance programs, a State agency has had the option to treat nonrecurring payments which are in the nature of a windfall as resources instead of as income. A windfall is a sum that is not earned, does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum. A windfall might come from an inheritance, lottery winnings, personal injury awards or an income tax refund, but not title II Social Security or VA

benefits. Social or VA benefits covering more than one month's benefits are instead examples of accumulated monthly income received in a single lump sum.

In reviewing the legislative history of OBRA, we believe that the Congress intended all lump sum payments (including windfalls) to be treated as income under the AFDC program. The Senate Finance Committee Report, No. 97-139, dated November 17, 1981 (on page 505) indicates that lump sum income should be "considered available to meet the ongoing needs of an AFDC family...". Given the intent of the lump sum provision to assure use of available funds in future months, we believe that windfall payments should be considered lump sum income. In the absence of the change, the very type of payments Congress intended to be counted and used to meet the family's future needs may not be budgeted for meeting future needs, if treated initially as a resource and not retained. Accordingly, for AFDC, we have classified payments in the nature of a windfall (with the sole exception of income tax refunds) as unearned income from a nonrecurring source and treat them as a lump sum in accordance with § 233.20(a)(3)(ii)(F) unless otherwise disregarded, e.g., under the casual and inconsequential income policy at § 233.20(a)(3)(iv).

***

Neither the lump sum income change nor the $75 standard work expense change applies to the adult assistance programs. Therefore, we are not changing the policy in effect for these programs. At State option, these payments may be considered either as income or as a resource.

We estimate savings of up to $1 million annually.

Comment: Twenty four commenters expressed concern about this provision suggesting that flexibility remain with the States to determine whether to count payments in the nature of a windfall as income or resources. The commenters argue that: (1) There is no inferred or expressed Congressional intent in OBRA's legislative history that HHS should change its longstanding policy of permitting States to count payments in the nature of a windfall as income or resources, i.e., by the OBRA amendments, Congress meant to change the methodology applicable to lump sum income but not the definition of lump sum income; (2) there is logic to treating retroactive benefits in this manner because they

are linked to ongoing benefits which can be used to meet future needs, while this is not so with nonrecurring windfall type benefits; (3) the statute provides a $1,000 resource limit and individuals who do not have the maximum resource limit when they come on the rolls but subsequently receive a windfall payment should be allowed to build up their resource limit from nonrecurring lump sum payments; and (4) individuals should be able to set aside the money from windfall payments for items not covered by the AFDC grant or Medicaid such as treatment, special education, special equipment, etc., or simply to build up a cushion for future emergencies.

Response: We have carefully considered the comments received and continue to believe that the provision is not only supportable under the statute but consistent with recent legislative history that large nonrecurring payments be considered available to meet the ongoing needs of an AFDC family. There is no logical basis for distinguishing between one type of large nonrecurring payment and another in determining whether it is income or resources and whether to apply the lump sum rule. From one standpoint, the legislative history expresses concern that considering such payments, prior to OBRA, as income in the month received and a resource thereafter had the perverse effect of encouraging the family to spend the income as quickly as possible in order retain AFDC eligibility. Since some States have always considered such payments as income, there was no specific definition of lump sum income that existed that can be argued that the Congress intended to maintain. Given the Congress' clear intent to have lump sums be used to meet future needs, States should not be allowed to exclude them by calling them resources.

States must disregard from the lump sum payment any amount that is earmarked and used for the purpose for which it is paid, i.e., monies paid for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair or resources, etc.

Finally, section 402(a)(17) of the Act, as amended by the Deficit Reduction Act of 1984 (Pub. L. 98-369), permits States to consider hardship situations and recalculate, under certain specified circumstances, the period of ineligibility determined under the lump sum rule.

Comment: There were several comments specifically in relation to personal injury awards and worker compensation payments. One commenter suggested that, because personal injury awards have been the subject of court challenge, we specify in the regulation how personal injury awards are to be treated. This would clarify the policy and avoid future misunderstanding as to their treatment. Several commenters suggested expanding the definition of funds treated as resources to specifically include worker's compensation payments and personal injury settlement payments. One commenter noted that Federal income taxes do not have to be paid on personal injury awards, yet for AFDC purposes such payments are counted as income.

Response: We agree that specifying in regulations how personal injury awards and workers' compensation payments are to be treated is necessary. We, therefore, have amended the regulation to clarify that personal injury awards and worker compensation must be treated as a lump sum income. We believe it is consistent with Congressional intent that nonrecurring lump sum payments be used to meet current as well as future needs and that personal injury and worker compensation awards are encompassed by the lump sum rule. States are required to exclude from consideration, in determining the amount of the lump sum, that portion of the money that is earmarked and used for the purpose for which paid.

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PART 233 — (AMENDED)

Part 233 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

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PART 233 — COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

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§ 233.20 Need and amount of assistance.

(a)***
(3)***
(ii)***

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC), title II and other retroactive monthly benefits, and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month.***

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